IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2570 OF 2007
IN
WRIT PETITION NO. 8507 OF 2006

1. Yusuf Mirasaheb Shaikh & 3 ors.] .. Petitioners (Ori.Plaintiffs)

Versus

1. The State of Maharashtra & anr.] .. Respondents

Mr. Girish S. Godbole i/b Anand S. Kulkarni for the petitioners.

Mr. C.R. Sonawane, AGP, for the respondents.

CORAM: S.B. MHASE, J.

DATED: 15TH OCTOBER, 2007

P.C. :

1. This Civil Application is to recall the order dated 1st October, 2007, passed in Writ Petition No.8507 of 2006 granting interim relief.

2. On 1st October, 2007, Writ Petition No.8507 of 2006 was listed for admission. This Court passed the following order:

". Heard. Rule.

. Interim relief in terms of prayer clause (b)."

3. Now, the learned counsel for the applicant has prayed that the interim relief be vacated and/or recalled. Prayer (b) in the main Petition is to the following effect:

"(b) Pending the hearing and final disposal of the Writ Petition, the execution, operation, implementation and effect of the judgment and order dt. 28.6.2006 passed by the VIIth Adhoc Addl. Dist. Judge Solapur in Civil Misc. Appeal No.89/06 and Judgment and Order dt. 8.6.2006 passed by the C.J.S.D., Solapur below Exh."5" in the R.C.S.No.469/06 be stayed."

4. The present applicant has filed Regular Civil Suit No.469 of 2006 in the Court of Civil Judge, Senior Division, Solapur, against the respondent viz. the petitioners in the main petition and prayed for a mandatory injunction to the effect that the defendant in the said Suit shall remove the seal put up on a Saw Mill of the applicant-plaintiff. In the said Suit also, an application for temporary mandatory injunction was filed at Exhibit-5. That application was decided by the Civil Judge, Senior Division by order dated 8th June, 2006. Application Exhibit-5 was allowed and defendants in the said Suit viz. the petitioners in the present Writ

Petition were directed to restore the condition of the Saw Mill of the applicant-plaintiff which was on or before 19th May, 2006 and to allow them to do their business on the same within one week therefrom. The said order was challenged by the defendants by filing a Misc. Civil Appeal No.89 of 2006. The said Misc. Appeal was dismissed on 28th June, 2006 by the VIIth Adhoc Additional District Judge, Solapur. Thereafter the present Writ Petition has been filed and at the admission stage, the above referred order was passed.

5. However, it is to be noted that after the disposal of the Misc. Appeal on 17th July, 2006, the said order was implemented and the seal on the Saw Mill of the applicant-plaintiff was removed by the defendants-petitioners and thus on the date when the interim order was passed by this Court, there was no seal on the said Saw Mill. Since the order of mandatory injunction was executed at that time, there is no question of stay of the said order. Under the circumstances, the petitioners-original defendants could have asked for injunction and/or permission from this Court to re-seal the premises. However, that was not a prayer made to this Court. Be that as it may, in view of the admitted position that the order was executed on 17th July, 2006, and on the day when this Court passed

an order the Saw Mill was not under the seal, suffice it to say that the interim order was uncalled for and, therefore, this Court hereby recalls the interim order passed on 1st October, 2007.

6. Civil Application is, accordingly, disposed of.

Sd/-
[S.B. MHASE, J.]